

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

OLLIE GREENE, Individually as the surviving parent of WYNDELL GREENE, SR., WILLIAM GREENE, as the Administrator of the Estate of WYNDELL GREENE, SR., and MARILYN BURDETTE HARDEMAN, Individually and as the surviving parent of LAKEYSHA GREENE,

Plaintiffs,

V.

**TOYOTA MOTOR CORPORATION,
TOYOTA MOTOR ENGINEERING &
MANUFACTURING NORTH AMERICA,
INC., TOYOTA MOTOR SALES USA,
INC., VOLVO GROUP NORTH
AMERICA, LLC., VOLVO TRUCKS
NORTH AMERICA, A DIVISION OF
VOLVO GROUP NORTH AMERICA,
LLC., STRICK TRAILERS, LLC, JOHN
FAYARD MOVING & WAREHOUSE,
LLC, and DOLPHIN LINE, INC.**

Defendants.

CAUSE NUMBER: 3:11-cv-0207-N

**PLAINTIFFS' RESPONSE TO THE
TOYOTA DEFENDANTS' MOTION TO SEAT TWELVE JURORS**

COME NOW Ollie Greene, Individually as the surviving parent of Wyndell Greene, Sr., William Greene, as the Administrator of the Estate of Wyndell Greene Sr., and Marilyn Burdette Hardeman, Individually and as the surviving parent of LaKeysha Greene (collectively the "Plaintiffs"), and file their Response to Defendant Toyota Motor Corporation, Toyota Motor Engineering & Manufacturing North America, Inc. and Toyota Motor Sales, U.S.A., Inc.'s (collectively the "Toyota Defendants") Motion to Seat Twelve Jurors (the "Motion"), and show the Court as follows:

I. INTRODUCTION

The Toyota Defendants file the Motion (Docket #640), requesting that twelve jurors be seated for the trial, arguing it would prevent a possible mistrial due to a potential shortage of jurors to render a verdict and that it is in the best interest of the parties and community to do so. This argument fails. The Toyota Defendants cite no authority that supports their argument. The obvious reason is because there is none.

II. ARGUMENT

In the Motion, the Toyota Defendants cite *Montiel v. City of Los Angeles*, 2 F.3d 335, 338 (9th Cir. 1998), to show that nothing in the Committee Notes of Rule 48 suggests that a court opting for a twelve-member jury violates the federal rules; but failed to mention that the rule (not the Committee Notes) clearly states that a district court has the discretion to empanel between six and twelve jurors. Despite what the Toyota Defendants argue in the Motion, empaneling a twelve-person jury will prejudice the Plaintiffs because it adds undue weight to the Plaintiffs' burden of proof by requiring Plaintiffs to persuade a greater number of jurors to achieve a unanimous verdict.

Further, contrary to the Toyota Defendants' assertion, seating less than twelve jurors does not indicate a likelihood of mistrial. In fact, the U.S. Supreme Court remarked that "the reliability of the jury as a fact-finder hardly seems likely to be a function of its size." *Cooley v. Strickland Transp. Co.*, 459 F.2d 779 (1972) *citing* 399 U.S. at 100-101 (applying this concept in a civil context). Finally, although Rule 48 permits the relief sought by the Toyota Defendants, such relief is permissive, not mandatory. The Toyota Defendants, however, have failed to make a compelling argument that would support their request for such relief. The Toyota Defendants sole purpose for requesting twelve jurors is to increase the number of jurors Plaintiffs will have to persuade to achieve a unanimous verdict, the effect of which is not in the

best interest of the parties or the community. For these reasons, the court should deny the Motion and in the alternative, empanel six jurors with two alternates.

III. CONCLUSION

For all the aforementioned reasons, Plaintiffs respectfully request that the Court deny the Motion and grant Plaintiffs such other and further relief, in law or in equity, to which Plaintiffs may be entitled.

Respectfully Submitted,

/s/ Aubrey "Nick" Pittman

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that on June 6, 2014, the foregoing pleading was filed with the clerk of the court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the court. The electronic case filing system sent a “Notice of Electronic Filing” to all attorneys of record who have consented in writing to accept this Notice as service of documents by electronic means.

/s/ Daryl K. Washington
DARYL K. WASHINGTON